

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

IN RE: STEPHEN A. GRIFFIN

CASE NO. 2:02-bk-70245M  
CHAPTER 7

ORDER

On August 5, 2003, this Court issued its order for Diane Sexton, Attorney-at-Law, to show cause why she should not be removed from representing Mary McGehee, a secured creditor in this bankruptcy case, because of a conflict of interest. Ms. Sexton was also ordered to show cause why sanctions should not be imposed pursuant to Federal Rule of Bankruptcy Procedure 9011 for filing frivolous pleadings and a fraudulent application for attorney's fees in connection with a claim filed on behalf of Ms. McGehee.

Ms. Sexton filed a response to the Order to Show Cause on August 22, 2003, and appeared at a hearing on the matter on August 27, 2003. At the hearing, Ms. Sexton presented testimony and offered exhibits in response to the Court's Order to Show Cause.

The Court, for the reasons stated in open court pursuant to Federal Rule of Bankruptcy Procedure 7052, ruled from the bench that Ms. Sexton was removed as attorney for Ms. McGehee because of a conflict of interest and the other matters were taken under advisement.

BACKGROUND

According to the Court's docket in this bankruptcy case, Ms. Sexton first appeared in this case on February 18, 2003, by filing a motion to vacate an order on behalf of Barbara Griffin, who is the

wife of the Debtor, Stephen A. Griffin, and the daughter of Ms. McGehee. Since that pleading, Ms. Sexton has also appeared on behalf of the Debtor;<sup>1</sup> Ms. McGehee; Highway 71 South Liquors, Inc.; Charlie Henderson, a creditor; and Ella Cooper, Douglas Payne, and Anna Corpening, administrative expense creditors.

### FRIVOLOUS PLEADINGS

On behalf of Barbara Griffin, Ms. Sexton propounded Requests for Admission to the Trustee pursuant to Federal Rule of Bankruptcy Procedure 7036. The Request was filed May 14, 2003. The Trustee filed his answer to the Request on June 16, 2003, and on June 17, 2003, Ms. Sexton filed a motion styled "Barbara Griffin's Impeachment of Richard Cox's Response to First Requests For Admission Propounded to Richard Cox, Trustee, Motion to Strike, and Request for Sanctions under FRCP 11". The substance of the pleading is as follows:

COMES NOW, Barbara Griffin, by and through her attorney Diane Sexton of The Sexton Law Firm, and for her impeachment of Richard Cox's responses to her First Request for Admissions, Motion to Strike, and Request for Sanctions under F.R.C.P. 11 states:

REQUEST FOR ADMISSION NO.1: Please admit that on or about May 9, 2003 you tendered a profit and loss statement regarding Highway 71 South Liquors, Inc. for the months of February, March, and April, 2003.

RESPONSE: Denied. I have not operated a corporation.

**IMPEACHMENT:** The statement "I have not operated a corporation" is non-responsive. However, by Document No. 606 filed on June 11, 2003, which is substantially a duplicate of the one tendered to Ms. Griffin on or about May 9, 2003 after a letter to Judge Mixon requesting same, Richard Cox filed in this case for Highway 71 South Liquors, Inc.,

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<sup>1</sup>Ms. Sexton was removed as attorney for the Debtor by an order entered May 6, 2003.

Mr. Cox submitted the February, 2003 "Profit and Loss" statement. The figures are identical.

By Document No. 607 filed on June 11, 2003, which is substantially a duplicate of the one tendered to Ms. Griffin on or about May 9, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the March, 2003 "Profit and Loss" statement. The figures are identical.

By Document No. 608 filed on June 11, 2003, which is substantially a duplicate of the one tendered to Ms. Griffin on or about May 9, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the April, 2003 "Profit and Loss" statement. The figures are identical.

By Document No. 609 filed on June 11, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the May, 2003 "Profit and Loss" statement.

REQUEST FOR ADMISSION NO.2: Please admit that you had no part in the management of Highway 71 South Liquors, Inc. prior to February 20,2003 when you took Barbara Griffin's keys.

RESPONSE: Admitted. I have had no part in the management of a corporation.

REQUEST FOR ADMISSION NO.3: Please admit that by your own figures provided in your Profit and Loss statement that the gross profit of Highway 71 South Liquors, Inc. was \$54,156.08 for February, 2003 when Barbara Griffin had been managing the business.

RESPONSE: Denied.

**IMPEACHMENT:** By Document No. 606 filed on June 11, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the February, 2003 "Profit and Loss" statement. The Gross Profit for Highway 71 South Liquors, Inc. is shown as \$54,156.08. Mr. Cox did not confiscate Barbara Griffin's keys until on or after February 20, 2003. Mr. Cox demanded these keys in contravention of Arkansas law which gives Mrs. Griffin either the entirety of the land, improvements and business or her dower one-half interest free and clear of any indebtedness.

REQUEST FOR ADMISSION NO.4: Please admit that by your own figures provided in your Profit and Loss statement the gross profit of Highway 71 South Liquors, Inc. was only \$21,232.48 for March, 2003, the first month of your management of the business.

RESPONSE: Denied.

**IMPEACHMENT:** By Document No. 607 filed on June 11, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the March, 2003 "Profit and Loss" statement. The Gross Profit for Highway 71 South Liquors, Inc. is shown as \$21,232.48.

REQUEST FOR ADMISSION NO.5: Please admit this is a decrease of 39.2 per cent in the gross profits.

RESPONSE: Denied.

**IMPEACHMENT:** \$21,232.48 divided by \$54,156.08 is 39.2 per cent. A simple matter of mathematics.

REQUEST FOR ADMISSION NO.6: Please admit that under your management Highway 71 South Liquors, Inc. has never met the level of gross profit as under the management of Barbara Griffin.

RESPONSE: Denied.

**IMPEACHMENT:** By Document 608 filed on June 11, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the April, 2003 "Profit and Loss" statement[.] The Gross Profit for Highway 71 South Liquors, Inc. is shown as \$31,840.14, which is obviously less than the \$54,156.08 which Barbara Griffin made.

By Document No. 609 filed on June 11, 2003, Richard Cox filed in this case for Highway 71 South Liquors, Inc., Mr. Cox submitted the May, 2003 "Profit and Loss" statement. The Gross Profit for Highway 71 South Liquors, Inc. is shown as \$27,523.74, which is obviously less than the \$54,156.08 which Barbara Griffin made.

Based upon the above documentation, all of which has been filed for record by Richard Cox, Mr. Cox in his Responses to the Requests for Admissions was not truthful.

WHEREFORE, premises considered, Barbara Griffin moves to strike the Responses filed by Richard Cox as being untruthful, as being in violation of F.R.C.P. 11(b)(1), (2) and (4), for her costs and fees incurred herein, and for all other relief which is proper.

Motion for Impeachment of Trustee, June 17, 2003.

At the time the Request for Admissions was filed on May 14, 2003, the only matter pending

between the Trustee and Barbara Griffin was Adversary Proceeding 03-07039 filed by the Trustee to recover property allegedly transferred to Ms. Griffin in violation of 11 U.S.C. §§ 544, 548, 549, and 550. The Request for Admissions has virtually no connection to the issues in the pending adversary proceeding.

Request for Admission Number One propounded by Ms. Sexton was premised on the Trustee admitting that the business he was operating was Highway 71 South Liquors, Inc. This Court had previously determined by order entered April 11, 2003, that neither the real estate nor the liquor store business was ever transferred from the Debtor to the corporation, Highway 71 South Liquors, Inc., and no appeal was taken from that order. Therefore, the business was not an asset of Highway 71 South Liquors, Inc. but belonged instead to Stephen Griffin and upon the bankruptcy filing became property of the estate to be administered by the Trustee when the case was converted from Chapter 11 to 7. Request Number Three and, by implication, Request Numbers Four, Five, and Six were premised on the Trustee admitting that Highway 71 South Liquors, Inc., was a business operated by Barbara Griffin. Both issues are contested by the Trustee.

If Ms. Sexton questioned the sufficiency of the Trustee's answer or wished to object to the answer then she should have filed a motion to determine the sufficiency of the answer pursuant to Federal Rule of Bankruptcy Procedure 7036(a). The motion to cite the Trustee for violation of Federal Rule of Bankruptcy Procedure 9011 because his answer to the Request for Admissions did not admit facts genuinely in dispute was frivolous and is itself a violation of Rule 9011. 10 Collier on Bankruptcy ¶ 9011[4] (Alan N. Resnick & Henry J. Sommer, et al. eds., 15<sup>th</sup> ed. rev. 1993) (commenting that the filing of a motion for sanctions “is itself subject to the requirements of the rule and

can lead to sanctions” (quoting Fed. R. Bankr. P. 9011 advisory committee note 1997 (quoting Fed. R. Civ. P. 11 advisory committee note 1993)).

#### APPRAISER'S FEE APPLICATION

On June 12, 2003, the Trustee filed an application to pay Wilson Auctioneers, Inc., \$350.00<sup>2</sup> for services rendered in the performance of an appraisal of the Debtor's personal property located at the Debtor's residence in Ft. Smith and at a lake house at Mt. Ida in Montgomery County, Arkansas. On June 13, 2000, Ms. Sexton, on behalf of Barbara Griffin, filed an objection to payment of the appraiser's fee and a hearing was conducted at Hot Springs, Arkansas, on July 30, 2003.

Ms. Sexton's argument at the hearing was that “it is of [no] value to the estate. It has generated no income for the estate. No creditors have been paid. The only person to realize any benefit from this is the auctioneer himself.” (Tr. at 6, Objection to Compensation for Appraiser, July 30, 2003.) Ms. Sexton offered no evidence that the appraisal fee was not an appropriate amount or that the service was not performed. Trustees routinely seek the opinion of appraisers so they can make better informed decisions about how to liquidate property. The objection was completely frivolous and was a waste of time for the Court and the parties.

#### FRAUDULENT FEE APPLICATION

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<sup>2</sup>Because of a scrivener's error, the amount of the fee was erroneously submitted to the Court as \$350.00 when it should have been \$750.00.

## AND CONFLICT OF INTEREST

The issue of whether to sanction Ms. Sexton under Rule 9011 for attorney's fees charged to Ms. McGehee must be considered in light of her conflict of interest in representing Ms. McGehee. The Court has previously removed Ms. Sexton as attorney for Ms. McGehee because of a conflict of interest as detailed in open court at the hearing on August 27, 2003.

Background information about the procedural posture of this case as it relates to Ms. McGehee's position as a creditor is necessary to a determination of whether Ms. Sexton's fee application is sanctionable pursuant to Rule 9011. Prior to the Debtor's bankruptcy filing, he had executed a note secured by a deed of trust in real property located in Montgomery County, Arkansas, referred to by the parties as "the lake house." The Debtor filed for Chapter 11 on January 14, 2002, at which time Bancorp South or its predecessor in interest held the deed of trust.

On November 19, 2002, while the Chapter 11 was still pending, the Debtor and Bancorp South entered an agreed order relaxing the automatic stay as to the lake house if the Debtor could not secure a bona fide offer to purchase by December 5, 2002. An order relaxing the stay as to the lake house was subsequently entered December 11, 2003. For reasons not shown on the record, the parties did not include in the order a paragraph abandoning the property from the estate. Bankcorp South filed a foreclosure action in state court on December 16, 2002.

Ms. McGehee, an 83-year-old widow, purchased the note secured by the lake house for

\$304,260.09 and by virtue of the purchase became a creditor in the case. The purchase occurred January 11, 2003. Ms. McGehee was substituted as plaintiff in the foreclosure action.

The case was converted to a case under Chapter 7 on February 5, 2003, and a trustee was appointed to administer the estate. Because the property was not abandoned from the estate, the Trustee became a party in interest in the pending state foreclosure action on the lake house. The Trustee removed the foreclosure action to the Bankruptcy Court in an application for removal filed March 4, 2003, in adversary proceeding 03-07043. Thereafter, Ms. Sexton, on behalf of Ms. McGehee, filed a motion to abandon and for relief from the stay to continue the foreclosure action. After a hearing in Fayetteville, Arkansas, on June 3, 2003, the Court denied the motion for relief and ordered the Trustee to liquidate the lake house within ninety (90) days. Ms. Sexton, on behalf of Ms. McGehee, has opposed the Trustee's efforts to liquidate the lake house. See, e.g., Objection to Trustee's Motion for Sale of Real Property as Being Violative of U.S. Supreme Court Case of Dewsnap, filed by Mary McGehee, July 10, 2003.

#### SHOW CAUSE HEARING

At the show cause hearing on August 27, 2003, Ms. Sexton offered her own sworn testimony, and the testimony of Barbara Griffin and Ms. McGehee.

Ms. McGehee testified that Ms. Sexton did not consult with her until after she purchased the note and mortgage. She stated that she discussed the issue of conflict of interest with Ms. Sexton on more than one occasion, and that she did not perceive any conflict. (Tr. at 19, August 27, 2003 hearing.) Ms. Sexton entered her appearance on behalf of Ms. McGehee in the foreclosure action, and Ms. McGehee wanted it to proceed. Ms. McGehee said she was satisfied with all of the legal fees Ms.



Sexton had charged her and said she did not think she had been charged for time that should have been billed to Mrs. Griffin. (Tr. at 22, August 27, 2003 hearing.) She said she wanted to enjoy the lake house and keep it in the family. She testified that while the case has been pending, Mrs. Griffin has been occupying the house and that Mrs. Griffin had been paying her the accruing interest on rent, but that Ms. McGehee is not now receiving interest payments by agreement.

On examination by the Court, Ms. McGehee testified that Ms. Sexton was not her attorney before she purchased the note. She seemed confused when confronted with Ms. Sexton's legal bills, which charged her \$1,650.00 for services in connection with the purchase of the lake house note. When the Court asked her if she remembered a meeting prior to purchasing the note for which Ms. Sexton charged her \$375.00, Ms. McGehee replied that she mostly consulted with her daughter, Mrs. Griffin. Ms. McGehee finally stated she must have had a lapse of memory. (Tr. at 26, August 27, 2003.)

Ms. McGehee further testified that she received assurances in regard to the note purchase from friends, Mrs. Griffin, and Ms. Sexton. She later acknowledged that Ms. Sexton advised her concerning the note, but she made up her own mind. Ms. McGehee testified that she did not recall a discussion with Ms. Sexton regarding the interest rate of the note.

When questioned by the Court, Ms. McGehee stated the following about Ms. Sexton's court appearance in Fort Smith, Arkansas, on March 27, 2003, and in Little Rock on May 16, 2003:

Q. And you remember the day your brother passed away and you had to go to his funeral?

A. Yes.

Q. Are you telling me you think it's correct that she should charge you \$1,350.00 for being in court that day, even though it didn't have anything to do

with your case?

A. Well, it must have had some relevance or she wouldn't be charging me for it.

Q. So you're relying on her statement to you that it benefitted you?

A. Yes.

Q. Do you know what matters were considered at that hearing?

A. Well, since I was not there I don't know.

Q. And the same question about the hearing in Little Rock; do you know what that was about?

A. Vaguely. I wasn't there. Since I wasn't there, I don't know other than what I heard from Barbara telling me some.

Q. But you were told that this involved your issues; right?

A. Yes.

Q. Do you think that's fair that she should charge you \$1,200.00 to go down to Court and sit there and not even participate in a case that doesn't involve you at all?

A. There must have been some aspect of it that did.

Q. Or she wouldn't have charged you?

A. That's right.

Q. So you have complete faith in Ms. Sexton?

A. I really do, yes.

(Tr. 28- 29, August 27, 2003 hearing.)

Ms. McGehee was not aware that Ms. Sexton represented the Debtor at one point in time or that she represented several other creditors and parties in interest in the case.<sup>3</sup> Ms. McGehee stated that she has paid Ms. Sexton "something like \$50,000.00" as of the August 27, 2003, hearing date. (Tr. at 33, August 27, 2003 hearing.) She also stated she was not aware that when Ms. Sexton entered her appearance on behalf of Ms. McGehee as plaintiff in the foreclosure that her daughter was a defendant who was also represented by Ms. Sexton and for a time her son-in-law, the Debtor, was

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<sup>3</sup>The state foreclosure action was removed to the Bankruptcy Court on March 4, 2003, and was assigned AP No. 03-07043. The style of the action is "Mary F. McGehee vs. Stephen A. Griffin, Barbara Griffin . . . and Richard L. Cox, Trustee". Ms. Sexton, therefore, represents the plaintiff and one of the defendants in this adversary proceeding.

also represented by Ms. Sexton.

Mrs. Griffin was also called as a witness by Ms. Sexton. She agreed that Ms. Sexton met with her and her mother to discuss conflict of interest and that her mother was charged \$1,425.00 for the meetings even though Mrs. Griffin was not charged. (Tr. at 57, August 27, 2003 hearing.) Mrs. Griffin acknowledged that her mother was also charged for discussing with Ms. Sexton whether Mrs. Griffin should pay her mother the accruing interest on the \$304,000.00 debt. She said this issue was discussed for two hours and that her mother paid for the entire two hours because it was for “my mom's benefit.” (Tr. at 59, August 27, 2003 hearing.) Mrs. Griffin testified that she thought Ms. Sexton's bills were fair and that Ms. McGehee was not charged for services rendered only for Mrs. Griffin's benefit. (Tr. at 46, August 27, 2003 hearing.) She said she has ceased making interest payments on the note to her mother because her mother requested it because Ms. McGehee stated, “I know you’re strapped . . . .” (Tr. at 53, August 27, 2003 hearing.)

Mrs. Griffin characterized her mother as a wealthy person who could afford not to receive the accruing interest on the \$304,000.00 debt. Mrs. Griffin said she had paid Ms. Sexton close to \$10,000.00.<sup>4</sup> Mrs. Griffin works in Ms. Sexton's office as a paralegal, but she is not paid for her services.

When questioned whether it was reasonable for Ms. Sexton to charge Ms. McGehee \$150.00 per hour for 34 hours for looking at the lake house, Mrs. Griffin stated:

A. Well, and my mom is the one that keeps asking her to do this stuff. If that's what my mom wants to do, that's my mom. My mom is 82 years old. She's taken

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<sup>4</sup>Ms. Sexton testified that Ms. Griffin has paid \$5,000.00. See page 14 infra.

care of herself this long; and whenever I try to suggest anything, she tells me, "Barbara, I am fully capable of making my own decisions."

Q. You don't feel that you and Ms. Sexton are taking advantage of her?

A. I don't think my mom is a person who can be taken advantage of.

(Tr. at 60-61, August 27, 2003 hearing.)

Furthermore, Mrs. Griffin admitted that Ms. Sexton charged Ms. McGehee for the entire six hours the 341(a) meeting lasted, but did not charge Mrs. Griffin anything.

Mrs. Griffin was also questioned about the charges related to the March 27, 2003, hearing at Ft. Smith:

Q. And the hearing that we had on March the 27th, none of that concerned your mother's issue; did it?

A. Again, my mom is the one that keeps - when she hears that there's a meeting, she asks Diane to go for her because she doesn't want to drive to these places. She's been upset that she's had to come to Hot Springs.

Q. Do you think that's fair?

A. It's my mom's decision.

Q. You don't think your mother is being taken advantage of when she's billed \$1,350 for a lawyer to appear at a hearing in which your issues were litigated and not hers?

A. If my mom has no problem with it, that's her decision. I mean, I was taught to respect my mom and to respect - my dad was an Air Force man and they lived an Air Force life. He was gone all the time. He flew B-52's, and my mom was left raising the four children; and she was very capable of making her decisions. She's always been an astute businesswoman. She's always done investments in stock and everything. She learned from the best of them, and I have every confidence in her decisions. She's gotten me out of a lot of hot water in my life.

(Tr. at 61, 62, August 27, 2003 hearing.)

The Court questioned Mrs. Griffin about whether it was in Ms. McGehee's best interest not to receive interest on the note:

Q. Do you consider that to be in her best interest if you quit paying the interest?

A. I am grateful that she said I could quit paying the interest.

Q. That wasn't my question. Do you think that's in her best interest?

A. Well, when the Trustee - if he sells the property, whoever buys the property will pay the interest. So yeah, that's in her best interest.

Q. It's in her best interest that you quit paying it?

A. Yes, because BankcorpSouth refused to let us pay the interest; and then when she bought the note, she had to pay all the accrued interest. So the same thing will happen this time. That's what she said. She said, "Why should you keep paying the interest when I had to pay the interest when I bought the property." That was her decision.

(Tr. at 62-63, August 27, 2003 hearing.)

The Trustee asked Mrs. Griffin the following:

Q. Well, at the hearing on her Motion for Abandonment held in Fayetteville, the Judge specifically informed everybody present that I wouldn't be allowed to sell the property unless Ms. McGehee's claim as allowed would be paid in full. Do you recall that?

A. Yes, I recall that.

Q. So why would there be a purpose in Ms. McGehee filing an objection to my motion to sell, which was heard here, if I would not be able to sell the property unless she was going to be paid?

A. Because I don't have any trust in what's decided here. We were also told we would get an appraisal at the last hearing, and we still don't have an appraisal. We were told that Benefit Bank would get the full amount of their lien, and they ended up having to pay \$22,000 and bid on their own property.

I consulted with Teresa Pockrus at the Nixon Law Firm and said, "Are you sure my mom will get her money?" And she said, "We don't know." Nobody knows. We don't have any confidence in this system. I'm sorry.

Q. So you're saying that you and Ms. Pockrus didn't accept the Court's statement that the property would not be sold by me unless your mother's claim was paid?

A. I really have no faith in what you do right now, no, sir.

Q. All right. But the purpose here, just like your mother - you've heard her testimony in Court today, and she said her purpose here is to retain - she wants title to the lake house for the use of her and her family.

A. She has come to that decision when she has seen that she doesn't know if the note will continue. So she would rather be able to do the foreclosure than sell it to somebody else. She bought the note thinking that she could either keep the note as an investment or get the lake house. Those were her two possibilities when purchasing the note.

(Tr. at 66-67, August 27, 2003 hearing.)

Mrs. Griffin is listed on Ms. Sexton's letterhead as a paralegal, but Mrs. Griffin states her function is that of a business manager, and she is not compensated for her work for Ms. Sexton. Mrs. Griffin has borrowed \$20,000.00 from Ms. McGehee during this bankruptcy case, and the proceeds of the loan were used to pay the Debtor's attorney's fees to his current attorney, Mr. Nixon. Mrs. Griffin was unsure whether Ms. McGehee has spent \$50,000.00 in attorney's fees or some amount less than that; she stated her mother is confused on the amount in legal fees her mother has incurred. (Tr. at 80, August 27, 2003.)

Ms. Sexton testified on her own behalf. She stated that in December, Mrs. Griffin approached her about representing her mother and Ms. Sexton declined, stating, "I don't think that would be right." (Tr. at 101, August 27, 2003 hearing.). However, after consulting an attorney whom she respected, she decided it was permissible to represent both clients. She testified that Mrs. McGehee has paid \$17,021.00 and Ms. Griffin has paid \$5000.00<sup>5</sup> in legal fees and that this case is consuming most of her time. (Tr. at 108, August 27, 2003.)

She stated the reason she filed the Rule 11 motion against the Trustee was because the Trustee had alleged that Mrs. Griffin had not made a meaningful contribution sufficient to earn compensation from Highway 71 South Liquors, Inc. Ms. Sexton expressed the notion that filing the Rule 11 motion "did not impugn Mr. Cox [the Trustee] as an attorney because I just don't think lawyers should impugn each other." (Tr. at 107, August 27, 2003 hearing.)

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<sup>5</sup>Mrs. Griffin testified she has paid \$10,000.00.

Upon questioning by the Court, Ms. Sexton first denied and then admitted that she represented

Ms. McGehee in connection with the purchase of the note:

Q. Okay. That's all I asked. Did you represent Ms. McGehee in connection with the purchase of the note and the assignment of the mortgage?

A. No, Sir. I advised her not to do it, and she went ahead and they did it. I did meet with her. I did say, "Don't sell your Wal-Mart stock; don't do this." I also said, "Please go and meet with other people." We did this over a period of time. I explained to her then why I wouldn't recommend it, but I also understand that my opinion compared to that of Dane Clay or Gary Richardson is nothing.

Q. My question is, did you or did you not represent her in connection with the purchase, give her advice concerning the purchase of the note?

A. I advised her not to do it.

Q. Did you represent her then?

A. I did not represent her when she met with Michael Redd to purchase it.

Q. Well, you've charged her 11 hours at \$150.00 an hour for \$1,650 from December 30th to January 13th for meeting with her in connection with the purchase of the lake house from Bancorp, the feasibility of selling Wal-Mart stock, and finalizing the terms of proposed purchase of Bancorp.

A. Yes sir.

Q. I don't understand how these time charges can be correct if you're telling me here under oath that you didn't represent her in connection with the purchase of the note.

A. I advised against selling the Wal-Mart stock, and I advised against the purchase. When that advice is overruled, I said, "Here's the interest you're making on your Wal-Mart stock. This is the value of Wal-Mart. They've been around a long time. This is the interest you can make on this note. This is how long it will take for you to realize your money on this note. These are decisions that you can make. I can give you my opinion."

I did not meet with Michael Redd. I met with Ms. McGehee and Ms. Griffin.

Q. So you were representing her, and you charged her for those services, didn't you?

A. If you want to put it that way, Sir. What I view is if you go to the closing, you're representing them. I didn't go to the closing.

Q. Well, you were advising her, at least?

A. Yes, Sir, for whatever my advice was worth.

Q. And you charged her for that legal advice?

A. Yes, Sir, after she said, "Are you going to send me a bill?"

Q. Okay.

A. At that point in time, I said, "Well, okay."

Q. I mean, I just get confused because you say you didn't represent her, and she said you didn't represent her. In your opening statement, you said you didn't represent her; but you charged her \$1,650, which you say was for advice concerning the purchase of the note.

A. Yes, Sir. As I'm trying to explain, I advised against it. I grew up with the Mosley family, and they have one of the largest abstract companies in Northern Arkansas. If you're representing someone in a real estate deal, as Bill would have said, you go to the closing. If you don't go to the closing, you didn't represent either the buyer or the seller. I did not go to the closing.

(Tr. at 108-111, August 27, 2003 hearing.)

Ms. Sexton denied charging only Ms. McGehee for discussing conflicts of interest and stated she charged Mrs. Griffin as well, but she did not know how much.<sup>6</sup> She said it would total at least 18 hours.

When asked whether it was fair to charge Ms. McGehee for the nine-hour hearing in Fort Smith involving matters unrelated to Ms. McGehee's issues, Ms. Sexton stated:

A. My 82-year-old client said, "I'm the one who asked you to be there all day long and tell me what happened. You could have left at any time." She said she felt she was the one who should pay that.

Q. My question is do you think that's fair? An 82-year-old lady who trusts you, and you did all this for all these other people and billed her for this work; do you think that's fair?

A. I don't think any legal bill is fair.

Q. Do you think it's fair to give that lady the bill for the work you did for her daughter that I just outlined?

A. I think it's fair to defer to what she said.

Q. What Ms. McGehee said?

A. Yes, Sir, I do. As I said, I don't think any legal bill is fair. God knows I've written off far more bills than I've ever collected. Little Rock is full of people who got free legal service.

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<sup>6</sup>Mrs. Griffin testified that she was not billed for these conflict-of-interest conferences.



(Tr. at 115, August 27, 2003 hearing.)

Ms. McGehee's interest would have been best served if she had not purchased the note. If she wanted to buy the lake house for her son-in-law and daughter, all she had to do was bid it in at the foreclosure sale or at the Trustee's sale. Becoming a creditor in the case has proved to be a financial disaster for Ms. McGehee. Ms. Sexton does not understand some basic principles of bankruptcy law such as the difference between an order of abandonment and an order granting relief from the stay. This

lack of knowledge impeded Ms. Sexton's ability to represent any of her clients' interests.<sup>7</sup> Mrs. Griffin's interest is served if she can prevent the sale of the lake house to a third party while Ms.

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<sup>7</sup>For example, when Ms. Sexton was asked by the Trustee about the effect of a relief from stay, Ms. Sexton replied:

A. Well, according to the Appellate Court cases I have found, it means that that is outside the bankruptcy. To bring it back in, you have to show that when that ruling was made, there was no finding that it had little or no value to the estate and there was no finding that the amount owed was less than the value of the property. I believe there was one other thing, but my mind is kinda scrambled after taking high blood pressure drugs. I enumerated every one of those, and I'll be happy to look them up for you. They're cited in In re Abdulhassen and in In re Hood. I can name several other cases. I can provide you with those cases. I have taken the time and trouble to ask other attorneys who are quite knowledgeable in the appellate process who agree with that interpretation.

Q. So your opinion in representing Ms. McGehee in this bankruptcy proceeding is that an order granting relief from stay removes the collateral that's the subject of that motion from being an asset of the bankruptcy estate and removes it from the jurisdiction of the Bankruptcy Court?

A. Sir, that's not my opinion. That's the opinion of the Ninth Circuit, the Fifth Circuit, the Sixth Circuit and, I believe, the Second Circuit.

...

Q. Ms. Sexton, my question, though, is -

A. I answered your question.

Q. Well, let me ask it again because I don't think you did. You've billed her \$17,000, and it's all based upon you thinking that I should not be able to sell the lake house because you believe it's not an asset of the Chapter 7 estate?

A. And I answered that. I said no, it is not my thinking; it is the cases that are in the Ninth Circuit, the Sixth Circuit, the Second, the Third and others I could name.

(Tr. at 119-120, August 27, 2003.)

McGehee's interest is served by getting her secured claim paid in full. Ms. Sexton is sacrificing Ms. McGehee's interest to promote the interest of Mrs. Griffin and in the process she is shamelessly and unfairly loading Ms. McGehee with most of the legal expense.<sup>8</sup>

## SANCTIONS

Federal Rule of Bankruptcy Procedure 9011 closely follows the language of Rule 11 of the Federal Rules of Civil Procedure. The bankruptcy rule provides in parts relevant to the facts of this case that:

By presenting to the Court . . . a petition, pleading, written motion, or other paper, an attorney is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances –

- (1) it is not being presented for any improper purpose . . .
- (2) the claims . . . therein are warranted by existing law or by a nonfrivolous argument . . .
- (3) the allegations . . . have evidentiary support . . .

Fed. R. Bankr. P. 9011(b)(1)-(3).

The Bankruptcy Court is empowered to impose sanctions on an attorney for violation of Rule 9011. Prior to imposing sanctions, the Court is required by the rule to follow certain procedures:

(c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

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<sup>8</sup> Many of the charges are overstated in terms of time spent on the task compared with the time that should reasonably have been incurred. For example, Ms. Sexton billed 1.5 hours to prepare a four-sentence motion for continuance; 2 hours to discuss the interest rate of a fixed rate note; and 26 hours to view the lake house. For a more detailed discussion of legal fees charged to Ms. McGehee, see Appendix 'A' and Appendix 'B' attached hereto.

(1) *How Initiated.*

...

(B) *On court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

...

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Fed. R. Bankr. P. 9011 (c)(1)-(3).

See, e.g., Grunewaldt v. Mutual Life Ins. Co. (In re Coones Ranch, Inc.), 7 F.3d 740, 744 (8th Cir. 1993) (affirming bankruptcy court ruling imposing sanction of attorney filing papers that were legally unreasonable, without factual foundation, and without a proper purpose); Brown v. Mitchell (In re Ark. Communities, Inc.), 827 F.2d 1219, 1221-22 (8th Cir. 1987) (upholding district court's affirmance of bankruptcy court's sanctions of attorney pursuant to Bankruptcy Rule 9011).

Bankruptcy Rule 9011 closely tracks Federal Rule of Civil Procedure 11, which imposes "an affirmative duty to conduct a reasonable inquiry into the facts and the law." Business Guides, Inc. v. Chromatic Communications Enters., Inc., 498 U.S. 533, 551 (1991). The legal standard for alleged violations of Rule 11 is "reasonableness under the circumstances." Business Guides, 498 U.S. at 551.

Bankruptcy Rule 9011 requires a pleading to have evidentiary support or be likely to have evidentiary support after reasonable inquiry. Halverson v. Funaro (In re Frank Funaro, Inc.), 263 B.R. 892, 939-40 (B.A.P. 8th Cir. 2001).

The evidence before the Court is that Ms. Sexton has violated Bankruptcy Rule 9011 by filing frivolous pleadings including a Motion for Rule 11 sanctions against the Trustee and an objection to an appraiser's fee of \$350.00. Nothing about the facts or the law governing the issues in this case provided any evidentiary basis to file either pleading.

In addition, the application for attorney's fees was filed for an improper purpose. The application is fraudulent in that Ms. Sexton has represented that she was performing services for Ms. McGehee's benefit when in fact she was representing her own interest and the interest of Mrs. Griffin. Moreover, charges for services performed on behalf of Ms. McGehee were often excessive or the services performed were unnecessary. Ms. Sexton is guilty of overreaching a vulnerable and elderly client and has violated multiple sections of the Model Rules of Professional Conduct.<sup>9</sup>

As sanctions for violating Rule 9011 and for charging Ms. McGehee for services performed for another client, Ms. Sexton is hereby assessed a fine of \$950.00 payable to the Clerk of the U.S. Bankruptcy Court for the Eastern and Western Districts of Arkansas. A copy of this opinion will be forwarded to the Arkansas Committee on Professional Conduct as a judicial complaint against Ms. Sexton.

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<sup>9</sup>For examples of Ms. Sexton's violations of the Model Rules of Professional Conduct, see Rule 1.1. Competence; Rule 1.5. Fees; Rule 1.7. Conflict of interest: general rule; Rule 3.1. Meritorious claims and contentions; and Rule 8.4. Misconduct.

IT IS SO ORDERED.



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JAMES G. MIXON  
U. S. BANKRUPTCY JUDGE

DATE: 11/21/03

cc: U. S. Trustee  
Richard L. Cox, Trustee  
Diane Sexton, Esq.  
David Nixon, Esq.  
Theresa Pockrus, Esq.  
Debtor

EOD on 11/21/2003 by aes.

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

IN RE: STEPHEN A. GRIFFIN

CASE NO. 2:02-bk-70245M  
CHAPTER 7

ORDER

On June 2, 2003, Mary McGehee, a creditor in this bankruptcy case, filed a proof of claim for \$353,343.99. The debt evidenced by the claim is secured by a deed of trust executed by the Debtor, Stephen A. Griffin ("Debtor"), in 1999 to City National Bank of Fort Smith. The claim was later amended to be the sum of \$371,446.49.

The Trustee filed an objection to the claim of Mrs. McGehee and a hearing was conducted at Hot Springs, Arkansas, on July 30, 2003. At the conclusion of the hearing, the Court sustained the Trustee's objection to the claim to the extent the total claim exceeded \$304,260.09. The Court took under advisement the issue of the amount of legal fees that could be added to the allowed portion of the claim.

The matter before the Court is a core proceeding pursuant to 28 U.S.C. § 157 and this Court has jurisdiction to enter a final judgment.

The creditor, Mrs. McGehee, is the mother of Barbara Griffin, who is the Debtor's wife. On or about January 13, 2003, Mrs. McGehee, after consulting with Diane Sexton, her attorney, purchased the note payable to City National Bank of Fort Smith and took an

assignment of the deed of trust. Mrs. McGehee paid \$304,260.09 for the note, according to her testimony.

Mrs. McGehee testified that she purchased the note to help her daughter and son-in-law retain possession of a house on Lake Ouachita in Montgomery County, Arkansas.<sup>1</sup> Mrs. McGehee stated that post petition, Barbara Griffin has paid her monthly rent equal to the ongoing accrual of interest on the note. She testified that she does not know the reason her claim is for more than \$304,260.09 but that she relies totally on her counsel, Ms. Sexton, concerning these matters.

Filed by Ms. Sexton and introduced into evidence at the hearing on the Trustee's objection, the claim and the subsequent amended claim contain no documentation as proof of Mrs. McGehee's claim. At the hearing, the creditor demonstrated that some of the extra charges were for attorney fees but failed to show the basis for the remaining charges. The Trustee does not object to a secured claim in the amount of \$304,260.09 and additional monies for reasonable attorney's fees, insurance, and accrued interest, to the extent these can be documented.

Ms. Sexton submitted a statement for attorney's fees for \$17,071.20, which she argues should be allowed as part of Mrs. McGehee's secured claim. While the Trustee does not dispute that reasonable attorney's fees incurred in protecting Mrs. McGehee's interest are properly allowed as part of her secured claim, he argues that Ms. Sexton's application is unreasonable in amount. He contends that services charged were not performed to protect Mrs. McGehee's

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<sup>1</sup>The Debtor's schedules indicate that he resides in Ft. Smith, Arkansas, in Sebastian County.



interest in the property or were not performed for the benefit of Mrs. McGehee at all. Therefore, the Court must examine Ms. Sexton's fee application.

Ms. Sexton's statement reflects the date of the first service performed for Mrs. McGehee was "12/30/03".<sup>2</sup> The Court file reflects that on February 18, 2003, Ms. Sexton appeared in this case on behalf of Barbara Griffin. On March 12, 2003, Ms. Sexton entered her appearance on behalf of Highway 71 South Liquors, Inc. On March 21, 2003, Ms. Sexton entered her appearance on behalf of the Chapter 7 Debtor, Stephen Griffin, but was later removed as attorney for the Debtor on motion of the Trustee. Ms. Sexton also represents Douglas Payne, a certified public accountant, who has a claim for administrative expenses.

The Bankruptcy Code provides in relevant part as follows:

To the extent that an allowed secured claim is secured by property, the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim . . . any reasonable fees . . . provided for under the agreement under which such claim arose.

11 U.S.C. § 506(b) (2000).

Section 506(b) allows the award of attorneys' fees to an oversecured creditor to the extent that its security agreement expressly provides for such fees. Dalessio v. Pauchon (In re Dalessio), 74 B.R. 721, 723 (B.A.P. 9th Cir. 1987); In re Mills, 77 B.R. 413, 417 (Bankr. S.D.N.Y. 1987) (citing In re Elmwood Farm, Inc., 19 B.R. 338, 341 (Bankr. S.D.N.Y. 1982)). However,

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<sup>2</sup> The date obviously contains a scrivener's error and should read "12/30/02".

entitlement is limited to reasonable fees. In re Dalessio, 74 B.R. at 723; In re Brunel, 54 B.R. 462, 464 (Bankr. D. Colo. 1985) (citations omitted).

The applicant has the burden of proving entitlement to fees and the reasonableness of requested compensation. Brake v. Tovormina (In re Beverly Mfg. Corp.), 841 F.2d 365, 371 (11th Cir. 1988) (quoting In re U.S. Golf Corp., 639 F.2d 1197, 1201 (5<sup>th</sup> Cir. 1981)); In re Meade Land & Dev. Co., 577 F.2d 858, 860 (3d Cir. 1978); In re Villa Capri Assocs. Ltd. Partnership, 141 B.R. 257, 260 (Bankr. N.D. Ga. 1992) (citing Norma v. Housing Authority, 836 F.2d 1292, 1303 (11<sup>th</sup> Cir. 1988); In re Greenwich Showboat Ltd. Partnership, 117 B.R. 54, 60 (Bankr. D. Conn. 1990)).

In determining reasonableness, bankruptcy law, rather than state law, governs. Blackburn-Bliss Trust v. Hudson Shipbuilders, Inc. (In re Hudson Shipbuilders, Inc.), 794 F.2d 1051, 1058 (5th Cir. 1986); Pasatiempo Properties v. Le Marquis Assocs. (In re Le Marquis Assocs.), 81 B.R. 576, 578 (B.A.P. 9th Cir. 1987) (citing In re 208 Ltd., 789 F.2d 674, 677 (9th Cir. 1986)). Reasonable fees allowable under 11 U.S.C. § 506(b) are those necessary to the collection and protection of a creditor's claim. In re Kroh Bros. Dev. Co., 105 B.R. 515, 521 (Bankr. W.D. Mo. 1989) (citing In re Reposa, 94 B.R. 257, 261 (Bankr. D.R.I. 1988)). Under 11 U.S.C. § 506(b), fees are reasonable only if they are incurred in protecting a secured creditor's rights in its collateral or in an effort to collect the debt. In re Brunel, 54 B.R. at 464.

As previously stated, the burden of proof as to the reasonableness of the fees is upon the applicant. In addition to any objection voiced by a party in interest, the Court has an independent

duty to investigate the reasonableness of compensation. In re Pettibone Corp. 74 B.R. 293, 299-300 (Bankr. N.D. Ill. 1987) (citing In re NRG Resources, Inc., 64 B.R. 643, 650 (W.D. La. 1986); In re Esar Ventures, 62 B.R. 204, 205 (Bankr. D.Ha. 1986); In re Jensen-Farley Pictures, Inc., 46 B.R. 557, 585 (Bankr. D. Utah 1985); In re Wilson Foods Corp., 36 B.R. 317, 320 (Bankr. W.D. Okla. 1984)); In re Holthoff, 55 B.R. 36, 39 (Bankr. E.D. Ark. 1985) (citing Fed. R. Bankr. P. 2016(a); In re Thomas, Inc., 43 B.R. 510 (Bankr. D. Mass. 1984); In re Bolton, 43 B.R. 598 (Bankr. E.D.N.Y. 1984)).

A fee application should be specific enough to identify the legal services rendered. In re Westside Creek Ltd. Partnership, 93 B.R. 177, 180 (Bankr. E.D. Ark. 1988) (citing Fed. R. Bankr. P. 2016; In re Holthoff, 55 B.R. 36, 39 (Bankr. E.D. Ark. 1985)). Counsel should not group all tasks performed in a single billing; otherwise, the Court is unable to determine whether the time spent on a specific task is reasonable. See In re Beverly Mfg. Corp., 841 F.2d at 370 (citing In re Art Shirt Ltd., 30 B.R. 318 (Bankr. E.D. Pa. 1983); In re Doyle-Lunstra Sales Corp., 19 B.R. 1003 (D.S.D. 1982); In re Hamilton Hardware, 11 B.R. 326 (Bankr. E.D. Mich. 1981)).

The allowance of attorneys' fees is within the discretion of the trial judge because he "has a close and intimate knowledge of the efforts expended and the value of the services rendered by the attorneys in the particular proceeding." In re Cushard, 235 B.R. 902, 909 (Bankr. W.D. Mo. 1999) (citing In re Harman Supermarket, Inc., 44 B.R. 918, 919 (Bankr. W.D. Va. 1984) (citing Barber v. Kimbrell's, Inc., 577 F.2d 216, 226 (4<sup>th</sup> Cir. 1978))).

The attorney fee statement at issue reflects that Ms. Sexton charged \$150.00 per hour,

which is a customary rate for attorneys who practice before the U. S. Bankruptcy Court in the State of Arkansas. However, the statement is flawed in so many aspects and the quality of legal services performed by Ms. Sexton is so far below the standard of competence expected of attorneys licensed to practice in the U. S. Bankruptcy Court that the rate of \$150.00 per hour in this case by this attorney is excessive. Guided by the factors enunciated by the Eighth Circuit Court of Appeals in Winter v. Cerro Gordo County Conservation Board, the Court reduces this rate to \$90.00 per hour. See Winter v. Cerro Gordo County Conservation Bd., 925 F.2d 1069, 1074 n. 8 (8<sup>th</sup> Cir. 1991). The following factors weigh in favor of reducing the hourly rate in this case: time and labor required; novelty and difficulty of the questions; skill requisite to perform the legal service properly; the amount involved and the results obtained; and the experience, reputation, and ability of the attorney.

Aside from the excessive hourly rate, the statement is flawed in other respects. Ms. Sexton has billed an unreasonable number of hours for simple or unnecessary tasks. Further, she has billed for services actually performed for a client other than Mrs. McGehee and for services for Mrs. McGehee that are unrelated to protecting her claim. The Court will disallow or reduce the following charges for the reasons set out below.

#### I.

#### CHARGES INCURRED PRIOR TO CREDITOR'S PURCHASE OF NOTE

The statement lists the following:

DATE	SERVICE	TIME	CHARGE
12/30/03 [sic]	Meeting with Barbara Griffin re: Purchase of Lakehouse by Mary McGehee	1.5 hours	\$225.00
1/06/03	Meeting with Barbara Griffin and Mary McGehee re: Purchase of Lakehouse from Bancorp	2.5 hours	\$375.00
1/08/03	Meeting with Barbara Griffin and Mary McGehee re: feasibility of selling Wal-Mart shares to finance purchase of Lakehouse from Bancorp	2 hours	\$300.00
1/10/03	Meeting with Barbara Griffin and Mary McGehee to finalize terms of proposed purchase	2.5 hours	\$375.00
1/13/03	Meeting with Barbara Griffin and Mary McGehee re: purchase from Bancorp	2.5 hours	\$375.00

The charges total 11 hours at \$150.00 per hour for a total of \$1,650.00 concerning services rendered before Mrs. McGehee purchased the note. These charges were not incurred in connection with protecting Mrs. McGehee's interest in the bankruptcy case, and these charges are not properly part of Mrs. McGehee's secured claim.

## II.

### CHARGES RELATED TO DUAL REPRESENTATION

DATE	SERVICE	TIME	CHARGE
1/14/03	Meeting with Barbara Griffin and Mary McGehee re: representation of Mary McGehee in pending litigation	3 hours	\$450.00
01/16/03	Review of Rules of Professional Conduct re: representation of Barbara and Mary McGehee	2.5 hours	\$375.00
01/17/03	Meeting with Barbara and Mary McGehee re: disclosure of any possible conflicts	2 hours	\$300.00
01/20/03	Meeting with Barbara and Mary McGehee to discuss representation of both	2 hours	\$300.00

These charges total 9.5 hours at \$150.00 per hour totaling \$1,425.00 concerning discussions with Mrs. McGehee and Barbara Griffin on the issue of counsel's dual representation of both clients. First, the Court cannot conceive of any reason why the issue of Ms. Sexton's dual representation of Mrs. Griffin and her mother would require 9.5 hours of discussion with the two clients. Second, there is no reason why 9.5 hours of discussing representing two creditors in the same case should all be billed to Mrs. McGehee. Finally, these discussions have no bearing on the defense of Mrs. McGehee's deed of trust and are not allowable as part of her secured claim.

### III.

#### EXCESSIVE OR VAGUE CHARGES

Numerous charges in the bill appear excessive for the services performed or are not specific enough to indicate what work was done. These include the following:

DATE	SERVICE	TIME	CHARGE
01/21/03	Draft and File Entry of Appearance for Mary McGhee in Montgomery County	1.5 hours	\$225.00

An entry of appearance typically contains two one-sentence paragraphs, and it is inconceivable that it required 1.5 hours of professional attorney time to prepare.

DATE	SERVICE	TIME	CHARGE
3/06/03	Draft Motion to Abandon Lakehouse	2 hours	\$300.00
3/07/03	Finalize Motion to Abandon and File Motion to Abandon	2 hours	\$300.00

Ms. Sexton charged \$600.00 for preparation of a motion to abandon. Filed March 11, 2003, the motion to abandon consists of a three-page routine document that should not require four hours to prepare.

DATE	SERVICE	TIME	CHARGE
3/25/03	Motion for Continuance of Hearing Set for 3/27	1.5 hours	\$225.00

This motion for continuance consists of an introductory sentence, three one-sentence paragraphs, and a conclusion. It could not have required 1.5 hours of attorney time to prepare.

DATE	SERVICE	TIME	CHARGE
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2/10/03	Review of bankruptcy file re: Mary McGehee and Lakehouse	3 hours	\$450.00
2/11/03	Review of motion to vacate and Abandon filed 9/27/02 by Bancorp and Review of Order to Vacate and Abandon filed 11/19/02	2.5. hours	\$375.00

These charges total 5.5 hours at \$150.00 per hour totaling \$825.00. The itemization does not adequately describe what services are being rendered. The only description given suggests that Ms. Sexton spent 5.5 hours pondering about the lake house and studying a motion filed September 27, 2002, and an “Order to Abandon” filed November 19, 2002.

#### IV.

#### CHARGES UNRELATED TO DEFENDING THE CLAIM

DATE	SERVICE	TIME	CHARGE
01/24/03	Meeting with Barbara Griffin and Mary McGehee to discuss continuation of per diem interest rate	2 hours	\$300.00

Upon the Trustee’s examination as to this item, Ms. Sexton explained the charge as follows:

Q The next entry is January the 24th, 2003 - meeting with Barbara and Mary McGehee to discuss continuation of per diem interest rate.

A. Yes.



Q. You spent two hours discussing the daily interest rate on the loan?

A. Yes, and explaining how it applied and how it should be paid, you know, whether they wanted to continue that interest rate or whether it would be in the benefit of one of the parties to have a higher interest rate, whether they wanted to pay it on a quarterly basis. We had a number of schedules laid out.

Tr. at 26, 27.

This explanation is completely bogus. The interest rate on the note purchased by Mrs. McGehee is a fixed rate so legal services regarding the rate are not required. Ms. Sexton may be referring to a discussion of how often her client Barbara Griffin wanted to pay the accruing interest to her other client, Mrs. McGehee. Such discussions do not pertain to the defense of Mrs. McGehee's secured claim.

DATE	SERVICE	TIME	CHARGE
3/03/03	341 Meeting	6 hours	\$900.00

Ms. Sexton purported to represent Barbara Griffin, Mrs. McGehee, and Highway 71 South Liquors, Inc. at the time of the first meeting. Thus, there is no reason that the entire first meeting should be charged to Mrs. McGehee. Therefore, the Court reduces the time at the first meeting charged to Mrs. McGehee to two hours.

V.

#### UNNECESSARY TRIPS TO LAKE OUACHITA

Counsel made three trips to view the property securing Mrs. McGehee's debt:

DATE	SERVICE	TIME	CHARGE
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2/19/03	Trip to view Lakehouse	8 hours	\$1,200.00
4/30/03	Trip to view Lakehouse	8 hours	\$1,200.00
5/27/03	Trip to Mt. Ida re:		
	Richard Cox and appraisers	<u>10 hours</u>	<u>\$1,500.00</u>
		26 hours	\$3,900.00

There is no discernable justification for counsel to spend 26 hours looking at the lake house. The value of the lake house is an issue in this case; therefore, viewing the property by counsel would be appropriate, but not for 26 hours billed at \$150.00 an hour. Time spent viewing the lake house will be reduced to a total of eight hours.

#### VI.

#### CHARGES FOR SERVICES NOT PERFORMED FOR CREDITOR

DATE	SERVICE	TIME	CHARGE
3/27/03	Hearing in Court	9 hours	\$1,350.00
5/16/03	Hearing in Little Rock	<u>8 hours</u>	<u>\$1,200.00</u>
		17 hours	\$2,550.00

These charges were not for services performed for Mrs. McGehee. The matter on March 27, 2003, concerning Mrs. McGehee was continued at Ms. Sexton's request. Mrs. McGehee's motion was the first matter called on the docket on that date, and the motion for continuance was immediately granted. Mrs. McGehee was not present in Court. The rest of the day was spent concerning the following matters in which Ms. Sexton participated:

1. Motion filed 2/18/03 by Barbara Griffin to set aside order of conversion;
2. Motion filed 3/21/03 to substitute filed by Diane Sexton
  - a. Objection filed 3/24/03 by Trustee
  - b. Objection filed 3/25/03 by Lance Beaty and others;
3. Trustee's motion to disqualify Diane Sexton as attorney for Highway 71 South Liquors, Inc. and for sanctions;
4. Motion filed 3/17/03 by Stephen Griffin to disqualify Isaac Scott as attorney for Lance Beaty and others;
5. Motion for relief from stay as to Trustee's seizure of non-estate property filed 3/12/03 by Highway 71 South Liquors, Inc.

The hearing held in Little Rock on May 16, 2003, concerned Stephen Griffin's motion to reconvert the case to chapter 11. Ms. Sexton, who appeared with Barbara Griffin, announced that she would not participate in the hearing, and she did not. The hearing had nothing to do with Mrs. McGehee's claim pursuant to section 506(b).

### CONCLUSION

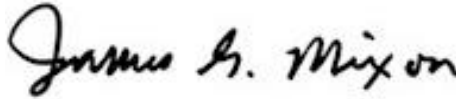
What is apparent from Ms. Sexton's fee request is that she has billed Mrs. McGehee, the 82-year-old mother of Barbara Griffin, for many services unrelated to Mrs. McGehee's deed of trust, but instead concern issues in which Barbara Griffin and Ms. Sexton were otherwise involved.

Moreover, the fee request is replete with overstated and unjustifiable charges. As part of the secured claim, the Court will allow \$3510.00 in legal fees, which represents 39 hours of work billed at the reduced rate of \$90.00 per hour. Charges for the remaining 74 hours itemized on Ms. Sexton's statement will not be allowed.

Therefore, the Trustee's objection to Mrs. McGehee's claim of \$371,446.79 is sustained.

She is allowed a secured claim of \$304,260.09 and \$3510.00 in attorneys fees.

IT IS SO ORDERED.



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JAMES G. MIXON  
U. S. BANKRUPTCY JUDGE  
09-11-03

DATE: \_\_\_\_\_

cc: U. S. Trustee  
Richard L. Cox, Trustee  
Diane Sexton, Esq.  
David Nixon, Esq.  
Theresa Pockrus, Esq.  
Mary McGehee  
Debtor

## SEXTON LAW FIRM

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3420 Duke Avenue  
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Attorney  
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Telephone 479-648-9993  
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June 9, 2003

Ms. Mary McGehee  
Ozark, AR

STATEMENT

Diane Sexton's HOURLY RATE: \$150  
(Rate per minute = \$2.50)

DATE	SERVICE	TIME	CHARGE
12/30/03	Meeting with Barbara Griffin re: Purchase of Lakehouse by Mary McGehee	97 min.	\$242.50
01/06/03	Meeting with Barbara Griffin and Mary McGehee re: Purchase of Lakehouse from Bancorp	154 min	385.00
01/08/03	Meeting with Barbara Griffin and Mary McGehee re: feasibility of selling Wal-Mart shares to finance purchase of Lakehouse from Bancorp	126 min	315.00
01/10/03	Meeting with Barbara Griffin and Mary McGehee to finalize terms of proposed purchase	161 min	402.50
01/13/03	Meeting with Barbara Griffin and Mary McGehee re: purchase from Bancorp	154 min	385.00

Page 2 - Mary McGehee

01/14/03	Meeting with Barbara Griffin and Mary McGehee re: representation of Mary McGehee in pending litigation	187 min	467.50
01/15/03	Review of file of pending litigation in Montgomery Co	94 min	235.00
01/16/03	Review of Rules of Professional Conduct re: representation of Barbara and Mary McGehee	152 min	380.00
01/17/03	Meeting with Barbara and Mary McGehee re: disclosure of any possible conflicts	124 min	310.00
01/20/03	Meeting with Barbara and Mary McGehee to discuss representation of both	121 min	302.50
01/21/03	Draft and file Entry of Appearance for Mary McGehee in Montgomery County	91 min.	227.50
01/24/03	Meeting with Barbara and Mary McGehee to discuss continuation of per diem interest rate	123 min	307.50
02/10/03	Review of bankruptcy file re: Mary McGehee and Lakehouse	184 min	460.00
02/11/03	Review of Motion to Vacate and Abandon filed 09/27/02 by Bancorp and Review of Order to Vacate and Abandon filed 11/19/02	156 min	390.00
02/12/03	Phone conference with Dane Clay re: abandonment of Lakehouse	30 min	75.00

02/13/03	Trip to Fayetteville to review Court's docket	243 min	607.50
02/19/03	Trip to view Lakehouse	487 min	1,217.50
02/21/03	Trip to Ozark to meet With Client	249 min	622.50
03/03/03	341 Meeting	368 min	920.00
03/06/03	Draft Motion to Abandon Lakehouse	122 hours	305.00
03/07/03	Finalize Motion to Abandon and file Motion to Abandon	127 min	317.50
03/25/03	Motion for Continuance of Hearing set for 03/27	92 min	230.00
03/25/03	Motion to Clarify previous Order of Court	96 min	240.00
03/27/03	Hearing in Court	561 min	1,402.50
04/30/03	Trip to view Lakehouse	492 min	1,230.00
05/02/03	Trip to Ozark to Meet with Client	249 min	622.50
05/05/03	Motion to Re-Schedule Hearing set for 6/23	67 min	167.50
05/16/03	Hearing in Little Rock	491 min	1,227.50
05/19/03	Trip to Ozark to Meet with Client	252 min	630.00
05/19/03	Search for appraiser located in Montgomery Co.	129 min	322.50
05/21/03	Search docket for all Bancorp orders	128 min	320.00

05/21/03	Meeting with Barbara and Mary McGehee re: 2004 set by Trustee	153 min	382.50
05/27/03	Trip to Mt. Ida re: Richard Cox and appraisers	611 min	1,527.50
06/02/03	Pre-trial preparation	127 min	317.50
06/03/03	Hearing in Fayetteville	490 min	1,225.00
06/06/03	Trip to Lakehouse to make sure of defects which auctioneer said he did not notice	493 min	1,232.50
06/09/03	Draft objection to motion to quash subpoena for lakehouse appraisal	66 min	165.00
06/09/03	Subpoena to H. Rice Brewer for appraisal on lakehouse	30 min	75.00
06/09/03	Telephone conference w/BancorpSouth re: alleged \$450,000 appraisal; discovered the appraisal included 3 properties - lakehouse plus 2 others	131 min	327.50

TOTAL TIME TO DATE \$20,519.50

PLUS: Filing fee for Motion to Abandon (03/10/03)	75.00
Copies 1,135 @ \$.10	113.50
Facsimile charges	103.00
Postage	7.20

TOTAL BILL TO DATE 06/09/03 \$20,818.20